

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

**INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, UAW**

Petitioner

and

Case No. 8-UC-376

**ILT DIVERSIFIED MATERIAL HANDLING, INC.,
d/b/a DMH TOYOTA LIFT**

Employer

DECISION AND ORDER

Upon a petition filed under Section 9(c) of the National Labor Relations Act (hereafter referred to as the Act), as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me.¹

ILT Diversified Material Handling, Inc. d/b/a DMH Toyota Lift is an Ohio corporation engaged in selling and servicing material handling equipment at its 8310 Airport Highway, Holland, Ohio facility.

On June 4, 2002, the Petitioner was certified as the exclusive collective bargaining representative for employees in the following unit:

¹The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The Petitioner is a labor organization within the meaning of the Act and claims to represent certain employees of the Employer. The Employer filed a post-hearing brief which I carefully considered.

All full-time and regular part-time production and maintenance employees employed by the Employer at its 8310 Airport Highway, Holland, Ohio facility, but excluding all office clerical employees, professional employees, guards and supervisors as defined by the Act.

The parties thereafter agreed to an initial collective bargaining agreement with effective dates from February 1, 2003 through January 31, 2007 and changed the unit description from the unit that was certified.² As set forth in this current collective bargaining agreement, the Petitioner is the exclusive collective bargaining representative for approximately fourteen employees in the following unit:

[A]ll production and maintenance employees employed by the [Employer] at its 8310 Airport Highway, Lucas County, Ohio facility, including all full-time and regular part-time dispatchers, excluding all office confidential employees, clerical employees, guards, professional employees, managerial employees, and supervisors as defined or interpreted under the National Labor Relations Act.

As amended at hearing, the Petitioner seeks to clarify the bargaining unit to include all full-time and regular part-time service secretaries.³ The Petitioner submits that the service secretary shares a sufficient community of interest with bargaining unit employees and should be included the unit. The Employer contends the service secretary constitutes an office clerical employee whose inclusion into a unit of production and maintenance employees is inappropriate.

For the reasons set forth below, I refuse to include the service secretary in the existing contractually agreed upon unit and shall order that this petition be dismissed. I

² The record reflects that the parties have not yet signed this agreement. I note, however, that negotiations are complete and the terms of this agreement have been implemented.

³ Petitioner asserts that the position it seeks to accrete into the existing unit is titled, "Service Writer." The Employer, however, asserts it has no job classification titled, "Service Writer" and that the actual job classification at issue is "Service Secretary." Currently, only one individual is employed as a service secretary.

find that the Service secretary constitutes an office clerical employee who does not share an adequate community of interest with employees in the existing bargaining unit.

Timeliness of the Petition

As a procedural matter, I note this petition was timely filed. The evidence reveals that during negotiations, the parties discussed the placement of the service secretary into the bargaining unit on multiple occasions. While this issue was unresolved during bargaining, the parties knew, by virtue of their discussions at the bargaining sessions in December 2002 and January 2003, that a dispute existed concerning the placement of the service secretary. Although the record reveals no written agreement reserving the right to take this issue to the Board, both parties acknowledged the issue was discussed at the table shortly before the contract was executed. In view of the fact that this petition was filed soon after the terms of the contract were reached, I find that this petition was timely filed. The absence of an explicit reservation by the Petitioner of its right to pursue this issue with the Board does not evidence a waiver of this right when it agreed to the unit description in the contract. **The Brookdale Hospital Medical Center, 313 NLRB 592, fn. 3 (1993) citing St. Francis Hospital, 282 NLRB 950 (1987).**⁴

Facts

The Employer specializes in the service and sales of sit-down rider forklift trucks manufactured by Toyota. The Employer's operations are divided into six departments: new sales, used sales, rental sales, parts, service and transportation. Used sales, rental

⁴ I note that in **St. Francis Hospital, *supra.* at 951**, the Board stated, "where the parties cannot agree on whether a disputed classification should be included in the unit but do not wish to press this issue at the expense of reaching an agreement, the Board will entertain a petition filed shortly after the contract is executed, absent an indication that the petitioner abandoned its request in exchange for some concession in negotiations. There is no evidence in this case that the Petitioner agreed to a unit description that does not include the service secretary in exchange for a concession on another issue."

sales and the transportation departments are overseen by the rental manager. A parts manager and service manager, respectively, supervise the parts and service departments. All of the department heads report to the Employer's vice-president of sales and marketing/general manager. The Employer also employs four employees – a receptionist, a sales coordinator, an accounts receivable/accounts payable clerk and service secretary – who perform administrative functions. These administrative functions relate to services offered by the various departments. The Employer's controller supervises administrative duties performed by these employees while the various department heads supervise other assigned duties.

The production and maintenance employees in the bargaining unit consist of ten mechanics and one dispatcher who work in the service department and two parts clerks who work in the parts department. The mechanics service forklift trucks off-site as well as in a 10,000 square foot shop area that is separated by an firewall from the a two floor office building. The service secretary maintains an office on the first floor of the office building.

The evidence indicates that the service secretary's job duties are divided into three categories: payroll, billing and administrative. The Employer's controller testified the service secretary's payroll duties consist of recording the hours worked by mechanics into spreadsheets as well as tracking mechanics' accrued and used vacation hours. The controller supervises the service secretary's payroll duties.

With respect to billing, the service secretary receives work orders filled out by mechanics and parts clerks that reflect the amount and type of labor performed by mechanics as well as the parts used in completing a customer's order. The service

secretary inputs data from these work orders into the Employer's computer system to generate customer invoices. These invoices are initially reviewed by the service secretary for accuracy and verification of mechanics' billing rates. Upon review, the service secretary forwards invoices to the service manager for review and approval before they are sent to customers. The service secretary responds to questions and concerns from customers regarding invoices and retains limited discretion to adjust customer's bills for certain expenses under fifty dollars.

Additionally, the service secretary tracks warranty claims and inputs data for warranty-related service work performed on Toyota forklifts into a computer systems utilized and operated by the manufacturer. The service manager oversees billing-related duties performed by the service secretary.

In terms of administrative duties, the service secretary prepares various internal reports used by the Employer's managers to monitor its business. These reports include a spreadsheet that tracks work performed on planned maintenance contracts the Employer maintains with certain customers as well as an internal report tracking warranty claims work. Both of these reports are prepared by the service secretary on a monthly basis and are reviewed by the Service Manager and General Manager.

The service secretary has limited contact with bargaining unit employees in performing her duties. The evidence reveals that mechanics and parts clerks submit work orders and time tickets that are placed in a basket. The service secretary retrieves these documents from the baskets and inputs the data into the computer system. The service secretary only has direct contact with bargaining unit employees in limited circumstances to verify information on these reports that is illegible or incomplete.

The working conditions of the service secretary and bargaining unit employees are in stark contrast. The mechanics and parts clerks utilize various tools necessary to service vehicles; the service secretary utilizes standard office equipment to perform her job. The mechanics work from 8 a.m. to 4 p.m. without a lunch break; the service secretary works from 8 a.m. to 5 p.m. and has a one-hour lunch break. The service secretary retains discretion to work a flextime schedule with the expectation that she work a 40-hour work week. The service secretary must seek prior approval from the controller in order to receive overtime pay. Mechanics cannot work a flextime schedule but receive overtime pay for any hours worked beyond their scheduled shift. Additionally, the service secretary's vacation requests are approved by the controller whereas vacation requests by mechanics and dispatcher are approved by the service manager.

Unlike the mechanics, parts clerk and dispatcher who are paid on an hourly basis, the service secretary is paid a salary. While the evidence reveals that the service secretary was recently converted from an hourly to salary basis in January 2003 based upon her effective job performance, I note that none of the employees in the bargaining unit are eligible for the conversion from hourly to salary. Accordingly, unlike bargaining unit employees, the service secretary does not report her work hours.

Analysis

Applying traditional community of interest factors, I find that the service secretary at-issue constitutes an office clerical employee who does not share a community of interest with employees in a unit of production and maintenance unit. Accordingly, I

find that there is no basis to clarify the unit in the manner sought of the Petitioner and I shall dismiss the petition.

Typically, the Board has classified employees as office clericals where their job duties related to general office operations and include such duties as billing, payroll, phone and mail. **Mitchellace, Inc.**, 314 NLRB 536 (1994); **Cook Composites & Polymers Co.**, 313 NLRB 1105 (1994); **Dunham's Athleisure Corp.**, 311 NLRB 1105 (1993).

As the Employer correctly notes in its post-hearing brief, the Board has consistently held that “[c]lericals whose principal functions and duties relate to the general office operations and are performed within the office itself are office clericals who do not have a close community of interest with a production unit. This is true even if those clericals spend as much as 25 percent of their time in the production area and have daily contact with production personnel.” **Mitchellace, Inc.**, *supra* at 536-37; **Hygenia Coca-Cola Bottling Co.**, 192 NLRB 1127, 1129 (1971); **Westinghouse Electric Corp.**, 118 NLRB 1043 (1957) (holding that office clerical employees are customarily excluded from a residual unit of production and maintenance employees).

The record reveals that the service secretary's duties relate purely to general office operations involving the input of data into computer systems for payroll, billing and administrative functions. The record further reveals the service secretary maintains a limited degree of daily contact with the mechanics, parts clerks and dispatcher, utilizes standard office equipment such as computers and telephones as part of her routine work duties, maintains a different work schedule than employees in the existing bargaining unit and works in an office building separate and distinct from the shop area where the

mechanics and dispatcher work. Finally, the service secretary is separately supervised from the unit employees. All of these factors militate against the inclusion of the service secretary into a unit of production and maintenance employees. **Hausner Hard-Chrome of KY, Inc.**, 326 NLRB 426, 431 (1998); **PECO Energy Co.**, 322 NLRB 1074 (1997); **Mitchellace**, *supra.* at 537; **Cook Composites**, *supra.* at 1108.

Based on the foregoing, and the record as a whole, I shall order that the unit clarification petition be dismissed.

ORDER

IT IS HEREBY ORDERED that the petition be dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by July 30, 2003.

Dated at Cleveland, Ohio, this 16th day of July, 2003.

/s/ Frederick J. Calatrello

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

420-1760-1580
385-7533-2001-5000

